THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.7950 of 2005

Dated : 03-12-2007

Between :

The Secretary,
Ministry of Railways,
(Railway Board),
New Delhi and 3 others.

... Petitioner/s

And

Dr. P.V.Surya Rao, s/o. Subrahmanyam,
Aged about 47 years, Hindu,
Occ: Service (Formerly MS/PC/Kazipet,
S.C. Railway, R/o. Flat NO.108,
Subhaprada Residency,
Malkajgiri, Secunderabad-500047.

...Respondent/s

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ORAL ORDER : (per the Hon'ble Sri Justice D.S.R. Varma)

Though the matter has been at the interlocutory stage, the same has been heard at length and with the consent of both the parties, the writ petition itself is taken up for final hearing and being disposed of finally.

2. Heard learned standing counsel for the petitioners-Railways and the learned counsel for the respondent.

3. This Writ of Certiorari is filed seeking to quash the order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for brevity 'the Tribunal'), passed in O.A.No.1600 of 2003, dated 12-10-2004, whereunder and whereby the Tribunal had directed the respondents therein (petitioners herein) to convert the punishment of dismissal of the applicant therein (respondent herein) from service into that of compulsory retirement.

4. It seems that the respondent herein, while working as Medical Superintendent, South Central Railways, was found to have involved in the act of negligence in treating two patients because of which the lower part of the body of the patients got paralyzed and thereby they were bed-ridden for life time. A departmental enquiry had been initiated against the respondent in which he was found guilty of the charge levelled against him. Consequent upon the submission of report by the enquiry officer and the explanation thereto by the respondent, the disciplinary authority arrived at a conclusion to impose the punishment of dismissal from service. Accordingly, after taking approval from the President of India, who is the punishing authority, the respondent had been imposed the punishment of dismissal from service, vide proceedings No.E(O)1-2002/PU-2/SC/107, dated 26-08-2003. Challenging the said punishment orders, the respondent filed O.A.No.1600 of 2003 before the Tribunal. The Tribunal, having elaborately gone into the merits of the case, including the evidence and other material on record, set aside the order of dismissal from service passed against the respondent and directed the petitioners herein to modify the order by awarding the respondent with punishment of compulsory retirement from service and to pay him all pensionary benefits. Aggrieved by the

said orders of the Tribunal, the petitioners filed the present writ petition.

5. It is the contention of the learned standing counsel for Railways that as per the decisions rendered by the apex Court, time and again, as already referred in the impugned order of the Tribunal, in **UNION OF INDIA vs. SARDAR BHADAR**[1] and **UNION OF INDIA vs. NARAYAN SINGH**[2]**,** the Tribunal cannot interfere with the decision and the quantum of punishment imposed by the disciplinary authority. The only exception to interfere with the order of the disciplinary authority is disproportionality of punishment. Even if the Tribunals or the Courts arrive at a conclusion that the punishment imposed was disproportionate to the irregularity committed, it cannot directly interfere with such punishment and alter or modify the said punishment. However, the Tribunal can remand the matter to the disciplinary authority for fresh consideration only on the ground of disproportionality.

6. Therefore, it is obvious from the judgments of the apex Court referred to above, the Tribunal shall record reasons to remand the matter to the disciplinary authority for consideration afresh as regards the disproportionality. It is to be remembered here that this power of remanding to the disciplinary authority can be exercised by the Tribunal or the Courts only when the guilt of the delinquent officer, as found by the enquiry officer and the disciplinary authority, was accepted in all other respects.

7. As already pointed out, the only exception and the area where the Tribunal or the Courts can interfere with the punishment awarded by the disciplinary authority is by way of remanding the matter to the disciplinary authority on the ground of disproportionality only.

8. In the instant case, the Tribunal obviously agreed with the finding of the enquiry officer as well as the disciplinary authority so far as the guilt of the respondent. In such a case, the Tribunal, in our considered view, was not justified in directly interfering with the quantum of punishment imposed by the disciplinary authority, without assigning any cogent reasons, and such interference amounts to contravening the judgments of the apex Court, as already referred to above.

9. A plain reading of the impugned order of the Tribunal, we find that the Tribunal, instead of exercising its jurisdiction to remand the matter to the disciplinary authority for considering the aspect of disproportionality, straight away interfered with the order of dismissal from service imposed by the disciplinary authority and modified the same to that of compulsory retirement with all pensionary benefits, that too without assigning any reasons, much less cogent.

10. For the foregoing, we feel it expedient to set aside the impugned order passed by the Tribunal with a direction to the Tribunal to dispose of the O.A., after considering the aspect of disproportionality of punishment by assigning special reasons, inasmuch as the Tribunal had concurred with the finding of the disciplinary authority as regards the guilt of the respondent. It is made clear that if the Tribunal arrives at a conclusion that the punishment imposed against the respondent was disproportionate to the irregularity committed, instead of interfering by itself with the quantum of punishment, the Tribunal is at liberty to remand the matter to the disciplinary authority for considering the aspect of proportionate punishment.

11. With the above observations and directions, the writ

petition is allowed, setting aside the impugned order passed by the Tribunal in O.A.No.1600 of 2003, dated 12-10-2004. There shall be no order as to costs.

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JUSTICE D.S.R. VARMA

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JUSTICE K.C. BHANU

03-12-2007
Msr

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[1] (1972) 4 SCC 618
[2] (2002) 5 SCC 11